

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

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The Court has received the Revised Presentence Investigation Report ("PSR") and the parties' objections thereto (Filing Nos. 122, 130). See "Order on Sentencing Schedule," ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties have objected to the quantity of controlled substance attributable to the Defendant in ¶¶ 20 and 27 and the base offense level 26 applied in the PSR, and the Defendant also objects to the facts regarding drug quantity in ¶¶ 18 and 19. The plea agreement recommends that the Defendant be held accountable for at least 100 but less than 200 marijuana plants. Note E to the drug quantity table in U.S.S.G. § 2D1.1 states that each marijuana plant is equivalent to 100 grams of marijuana, unless the plant is heavier. If the plant is heavier, the actual weight should be used. The Court's tentative findings are that, absent unusual circumstances, the plea agreement should be upheld. The Defendant assumes that the default calculation set out in Note E applies and, accordingly, that the base offense level should be calculated as 16 based on at least 10 but less than 20 kilograms marijuana. The government does not address this issue in its

objections. The Court's tentative findings are that the parties' objections should be granted and base offense level 16 applies based on the Defendant's calculation.

IT IS ORDERED:

1. The Court's tentative findings are that the parties' objections (Filing Nos. 122, 130) to the PSR are granted as stated above;

2. The parties are notified that my tentative findings are that the PSR is correct in all other respects;

3. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 11th day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge